004

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1029 ....OF 2004

PETITIONER

Amrut Lal Sahu, S/o Late Dayaram Sahu, aged about 40 years, R/o Charbhatta, P.O. Singarpur, Tah. Khairagarh, Distt. Rajnandgaon (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh; through Deputy Director, Panchayat and Samaj Kalyan, Distt. Rajnandgaon (CG)

2. Chief Executive Officer, Janpad Panchayat Khairagarh, Distt. Rajnandgaon,(CG)

3. Sarpanch Gram Panchayat Charbhata, Janpad Panchayat Khairagarh, Distt. Rajnandgaon (CG)

4. Gram Sabha Charbhata; through Sarpanch Gram Panchayat Charbhata, Distt. Rajnandgaon (CG)

P. R. No. 1050/04 Presented by Shri Sameer Sahu dated 8.4.04

Clerk to A. G. Chhattisgarh

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1029 **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23.09.2005

Mr. Ashok Das Vaishnav, counsel for the petitioner.

Mr. Vivek Sharma, Panel lawyer for the State/respondent No.1.

Mr. Azad Siddique, counsel for the respondent No. 2.

Mr. Anoop Mazumdar, counsel for the respondents No. 3 & 4.

The petitioner was appointed as Panchayat Karmi on 01.11.1995 (Annexure P-1). Thereafter, by order dated 18.06.1997, the petitioner was appointed as Panchayat Secretary Under Section 69 (1) of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993, in the Gram Panchayat, Charbhata, Janpad Panchayat Khairagarh, Distt. Rajnandgaon (C.G.). The respondents No. 3 and 4 by resolution dated 11.01.2004 resolved to remove the petitioner from the post of Panchayat Secretary. Thereafter, one more resolution was passed on 20.02.2004 by the Gram Sabha, removing the petitioner from service. Pursuant thereof, the petitioner has been removed from the service vide order dated 13.03.2004 (Annexure P-10) and order dated 27.03.2004 (Annexure P-11).

Learned counsel for the petitioner submits that Rule 7 of the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 provides that no order imposing, any of the major penalties prescribed in Rule 5 be passed, except after a formal inquiry held in the manner, provided in the said Rule can be passed. Rule 7 reads as under :-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — ९ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"7. Procedure for imposing major penalties,

(1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (IV) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing to defence, be permitted to inspect and take extracts from such records as he may specify:

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation along with all the inquiry papers.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce documentary evidence, if any, and to have such witness called as he may wish. Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefore.

(8) The proceedings conducted against the persons charged shall contain a sufficient record of

(i) the charges framed against such person and the statement of allegations;
(ii) the written statement of defence if any;
(iii) the oral evidence taken in the course of the inquiry;

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(iv) the documentary evidence considered in the course of the inquiry-

(v) the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefore.

(9) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer any where, disciplinary authority is not the Enquiry Officer, a

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statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged."

The petitioner submits that no show cause notice was issued and no enquiry was held before the impugned resolutions dated 11.01.2004 and 20.02.2004 and the impugned orders dated 13.03.2004 (Annexure P-10) and 27.03.2004 (Annexure P-11), were passed.

Learned counsel for the petitioner submits that the termination order was passed in violation of mandatory provisions of Rule 7 of the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 and as such, the same deserves to be quashed.

Learned counsel appearing for the respondents submit that though the enquiry was not completed but the enquiry was initiated on 25.01.2004. Admittedly, the inquiry was not concluded and the report was not filed before 11.01.2004 i.e. the date on which the first resolution of the Gram Panchayat was passed to remove the petitioner from service. It is a clear case of gross violation of principles of natural justice and statutory provisions of the Rule 7 of the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999.

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Bal/4	In view of the foregoing, the impugned termination orders are quashed and it is held that the petitioner is entitled to be reinstated with full back wages. The petition is accordingly allowed. No order as to cost. **Sd/-** **Satish K. Agnihotri** **Judge**	